

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

ORIGINAL

ORIGINAL
FILE

In the Matter of

MOTOROLA SATELLITE
COMMUNICATIONS, INC.

Request for Pioneer's Preference
to Establish a Low-Earth Orbit
Satellite System in the
1610-1626.5 MHz Band

) ET Docket No. 92-28

) PP-32

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APR 23 1992

Federal Communications Commission
Office of the Secretary

To: The Chief Engineer

**MOTION TO STRIKE OR, IN THE ALTERNATIVE,
TO PLACE MOTOROLA SUPPLEMENT ON PUBLIC NOTICE**

TRW Inc. ("TRW"), by its attorneys, hereby moves to strike the April 10, 1992 "Supplement to Request for Pioneer's Preference" filed by Motorola Satellite Communications, Inc. ("Motorola") from the record of the above-captioned proceeding. Motorola's Supplement, which purports to make substantive claims in support of Motorola's July 30, 1991 Request for Pioneer's Preference (File No. PP-32), was filed after the April 8, 1992 deadline established for the submission of comments on the pioneer's preference requests consolidated into ET Docket No. 92-28, and was unaccompanied by any request for acceptance of late filed pleading. Because it is inexcusably untimely and prejudicially disruptive, Motorola's Supplement should be stricken. Any other treatment would cause substantial prejudice to all of the parties to ET Docket No.

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92-28 that filed their requests and comments in the manner specified by the Commission.

In the event that the Commission decides to entertain Motorola's Supplement as a new or "additional" pioneer's preference request filed pursuant to Deadline to File Pioneer's Preference Requests, Low-Earth Orbit Satellites Above 1 GHz (ET Docket No. 92-28) (released March 11, 1992), it should, at the very least, treat the filing as a new preference request, and invite additional public comment as required by Section 1.402(e) of the Commission's rules.

I. Motorola's Supplement Should Be Stricken From The Record Of ET Docket No. 92-28 As An Inexcusably Untimely Filing.

Motorola, TRW, and four other parties have separately applied to the Commission for authority to establish satellite systems that would utilize all or some portion of the 1610-1626.5 MHz and 2483.5-2500 MHz bands. Five of the six applicants have both petitioned the Commission to adopt rules to govern their proposed services and requested pioneer's preferences for their proposals pursuant to Section 1.402 of the Commission's rules.

In Public Notice, Requests for Pioneer's Preference Filed (released March 9, 1992) ("March 9 Public Notice"), the Commission assigned file numbers to the pioneer's preference requests filed by Motorola, TRW, Ellipsat Corporation,

Constellation Communications, Inc., and Loral Qualcomm Satellite Systems, Inc., and consolidated the five requests into new ET Docket No. 92-28. In addition, the Commission stated that comments on these requests "must be filed by April 8, 1992." Id.

On March 11, 1992, the Commission issued its Public Notice in Deadline to File Pioneer's Preference Requests, Low-Earth Orbit Satellites Above 1 GHz (ET Docket No. 92-28) (released March 11, 1992) ("March 11 Public Notice"). In this notice, the Commission "announced that April 10, 1992, will be the final day for filing any additional pioneer's preference requests with regard to proposals to establish a system or systems of low-Earth orbit satellites or other satellite systems that request authorization to operate on the 1610-1626.5 and 2483.5-2500 MHz bands." Id. (emphasis added). The Commission noted that previously-filed petitions for rule making and pioneer's preference requests concerning the allocation of the 1610-1626.5 MHz and 2483.5-2500 MHz bands had been consolidated into ET Docket No. 92-28, and stated that a party desiring to file "an additional pioneer's preference request related to this docket" must reference the existing docket on the cover page of its new request. Id. (emphasis added).

Motorola states that its Supplement, which is expressly intended by Motorola to "supplement[]" its request for

pioneer's preference" (File No. PP-32 in ET Docket No. 92-28), was filed pursuant to Section 1.402(c) of the Commission's rules and the March 11 Public Notice. Motorola Supplement at 1. According to Motorola, the Supplement contains "updated information concerning the technical feasibility of the innovations encompassed in the IRIDIUM™ system." Id. at 2 (footnote omitted). Motorola urged the Commission to grant "its request, as supplemented" Id.

Motorola's Supplement must be stricken from ET Docket No. 92-28. Contrary to the authority cited at the outset of Motorola's Supplement, neither Section 1.402(c) of the Commission's rules, nor the March 11 Public Notice, authorized an April 10, 1992 filing relating to one of the pioneer's preference requests pending in ET Docket No. 92-28.^{*/} Instead, the pending requests in that docket -- including Motorola's request in File No. PP-32 -- are governed by Sections 1.402(e) and 1.403 of the Commission's rules, and the relevant public notice is the March 9 Public Notice.

^{*/} Section 1.402(c) provides that the Commission will, by public notice, establish a cut-off deadline for the submission of new pioneer's preference requests that relate to a specific new spectrum-based service or technology. See 47 C.F.R. § 1.402(c); Establishment of Procedures to Provide a Preference to Applicants Proposing an Allocation for New Services, FCC 92-57, slip op. at ¶ 26 (released February 26, 1992). The March 11 Public Notice stated on its face that the April 10, 1992 deadline established therein was established pursuant to Section 1.402(c). March 11 Public Notice at 1.

Section 1.402(e) provides in pertinent part that "[a]ny interested person may file a statement in support of or in opposition to a request for pioneer's preference, and a reply to such statements, subject to filing deadlines that shall be published in the 'Public Notice' issued pursuant to Section 1.403." 47 C.F.R. § 1.402(e). Section 1.403 states that a pioneer's preference request "will be given a file number and a 'Public Notice' will be issued (by means of a Commission release entitled 'Requests for Pioneer's Preference Filed') as to the preference request, file number, and date of filing." 47 C.F.R. § 1.403.

The Commission's March 9 Public Notice, which was entitled "Requests for Pioneer's Preference Filed," was obviously the notice contemplated by Sections 1.402(e) and Section 1.403 of the Commission's rules. Since this notice established a deadline of April 8, 1992 for the submission, inter alia, of statements in support of Motorola's pending pioneer's preference request, Motorola's April 10 Supplement was untimely filed.

Motorola made no attempt to seek acceptance of its late-filed supporting statement. Although it acknowledges that April 8 was the deadline for comments on the preference requests consolidated into ET Docket No. 92-28, Motorola simply attempts to slide the Supplement into the record under the public notice inviting "additional" pioneer's preference

requests. See Motorola Supplement at 1-2 & n.1. Motorola thus was aware of the April 8 deadline, and chose to disregard it in a transparent attempt to obtain an advantage over its competitors.

The Commission should reject Motorola's ploy and strike the Supplement from the record in File No. PP-32 in ET Docket No. 92-28. The Commission has already indicated its intention that filings in the instant proceeding be made in compliance with the deadlines established in the March 9 Public Notice. In its Order Denying an Extension of Time for Comments and Replies in ET Docket No. 92-28, DA 92-326 (Office of Engineering and Technology, released March 27, 1992), the Commission denied a request for extension of the deadline established in the March 9 Public Notice. The Commission stated that it wanted "to ensure a complete record as a basis for its decisions and to act on these [pioneer's preference] requests without further delay." Id. slip op. at 3.

Motorola's Supplement hinders the achievement of both of these objectives, as it interjects new materials into the record through the device of an inexcusably untimely submission. If the Supplement is not stricken, all parties to ET Docket No. 92-28 will be detrimentally affected by the delay Motorola's pleading will cause to the issuance of a notice of proposed rule making, and thus to the ultimate establishment of service. The competing applicants will be forced to respond to

the newly-submitted material, and the Commission will require additional time to evaluate those responses. In addition, if the Commission were to include the Supplement in File No. PP-32, it would not only reward Motorola for its underhanded tactics, but cause serious prejudice to the numerous parties such as TRW that responded in a timely fashion to Motorola's pioneer's preference request (as it stood from July 30, 1991 until April 8, 1992).

In short, Motorola's Supplement is blatantly contrary to the Commission's pioneer's preference rules, and poses a substantial threat to the orderly administration of the Commission's processes -- to the direct detriment of parties such as TRW that complied with the Commission's rules. It should be stricken from File No. PP-32 in ET Docket No. 92-28, and given no further consideration.

II. In The Event That Motorola's Supplement Is To Be Considered As An "Additional" Pioneer's Preference In ET Docket No. 92-28, It Must Separately Be Set Out For Public Comment.

It is clear, on the basis of the discussion in Section I above, that Motorola's Supplement may not be considered in conjunction with or have any bearing whatsoever on the Commission's consideration of the request in File No. PP-32 as it stood at the close of business on April 8, 1992. Notwithstanding the clear dictates of fairness, the Commission

may elect to accept the filing as an "additional" pioneer's preference pursuant to Section 1.402(c) and the March 11 Public Notice. TRW believes that this option is unsound, as it presents rampant opportunity for claims and assertions regarding the Supplement to taint the consideration of Motorola's original request for pioneer's preference, and it would be completely inconsistent with Motorola's own views that the Supplement is not a stand-alone pioneer's preference request, but instead is a pleading that is expressly intended by Motorola to be considered in conjunction with its pending request. Nevertheless, if the Commission were to accept Motorola's Supplement as an "additional" request, it must place the Supplement on public notice for comments from interested parties.

A new pioneer's preference request that is timely-filed pursuant to Section 1.402(c) for consideration with pending requests must be treated like any other pending request. Thus, under Sections 1.402(e) and 1.403 of the Commission's rules, the request must be placed on a public notice entitled "Requests for Pioneer's Preference Filed," in a manner that provides interested persons an opportunity to file statements in support of or opposition to the request, and an opportunity to reply to the statements of others. See 47 C.F.R. §§ 1.402(e) and 1.403. This action must, at the least, be taken here with regard to Motorola's Supplement.

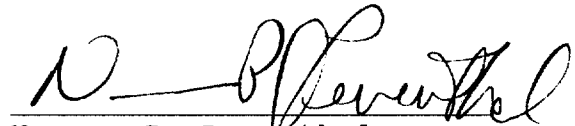
III. Conclusion

Motorola's Supplement is nothing more than another of Motorola's attempts to obtain an unfair preferential advantage over its competitors for the 1610-1626.5 MHz and 2483.5-2500 MHz bands. TRW is hopeful that the Commission will see through Motorola's gamesmanship, and strike the Supplement before Motorola can further disrupt and delay the Commission's processes. In the event, however, that the Commission elects not to take that clearly-warranted action here, it must apply its rules and place the Supplement out for public comment.

Respectfully submitted,

TRW Inc.

By:



Norman P. Leventhal
Raul R. Rodriguez
Stephen D. Baruch

Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006-1809
(202) 429-8970

April 23, 1992

Its Attorneys

CERTIFICATE OF SERVICE

I, Kaigh K. Johnson, hereby certify that a copy of the foregoing "Motion to Strike or, In the Alternative, To Place Motorola Supplement on Public Notice" was served by first-class mail, postage prepaid, this 23rd day of April, 1992 on the following persons:

*Chairman Alfred C. Sikes
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner James H. Quello
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner Sherrie P. Marshall
Federal Communications Commission
Room 826
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner Andrew C. Barrett
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner Ervin S. Duggan
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, D.C. 20554

*Thomas P. Stanley
Chief Engineer
Federal Communications Commission
2025 M Street, N.W.
Room 7002
Washington, D.C. 20554

*Via Hand Delivery

*Cheryl A. Tritt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

*Richard M. Firestone
Chief, Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

*William Torak
Deputy Chief
Spectrum Engineering Division
Federal Communications Commission
Room 7130
2025 M Street, N.W.
Washington, D.C. 20554

*Raymond LaForge
Federal Communications Commission
Room 7334
2025 M Street, N.W.
Washington, D.C. 20554

*Wendell R. Harris
Assistant Bureau Chief
Common Carrier Bureau
Federal Communications Commission
Room 7130
2025 M Street, N.W.
Washington, D.C. 20554

*Cecily C. Holiday
Chief, Satellite Radio Branch
Federal Communications Commission
Room 6324
2025 M Street, N.W.
Washington, D.C. 20554

*James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau
Federal Communications Commission
Room 6010
2025 M Street, N.W.
Washington, D.C. 20554

*Via Hand Delivery

*Thomas Tycz
Deputy Chief
Domestic Facilities Division
Common Carrier Bureau
Federal Communications Commission
Room 6010
2025 M Street, N.W.
Washington, D.C. 20554

*Fern J. Jarmulnek
Satellite Radio Branch
Federal Communications Commission
2025 M Street, N.W.
Room 6324
Washington, D.C. 20554

Lon C. Levin, Esq.
Leslie A. L. Borden, Esq.
Vice President & General Counsel
American Mobile Satellite Corporation
1150 Connecticut Avenue, N.W.
4th Floor
Washington, D.C. 20036

Bruce D. Jacobs, Esq.
Glenn S. Richards, Esq.
Fisher, Wayland, Cooper & Leader
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037
(Counsel for AMSC)

Robert A. Mazer, Esq.
Albert Shuldiner, Esq.
Nixon, Hargrave, Devans & Doyle
One Thomas Circle, N.W.
Suite 800
Washington, D.C. 20005
(Counsel for Constellation)

Jill Abeshouse Stern, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037
(Counsel for Ellipsat)

*Via Hand Delivery

Linda K. Smith, Esq.
Robert M. Halperin, Esq.
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(Counsel for Loral)

Leslie Taylor, Esq.
Leslie Taylor Associates
6800 Carlynn Court
Bethesda, MD 20817-4302
(Counsel for Loral)

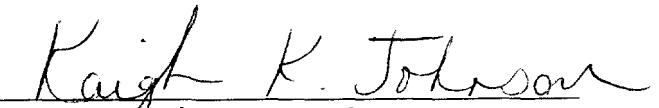
Veronica Haggart, Esq.
Robert Frieden, Esq.
Motorola, Inc.
1350 I Street, N.W.
Suite 400
Washington, D.C. 20005

Philip L. Malet, Esq.
Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(Counsel for Motorola)

Dr. Robert L. Riemer
Committee on Radio Frequencies
HA-562
National Research Council
2101 Constitution Avenue, N.W.
Washington, D.C. 20418

John L. Bartlett, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
(Counsel to Aeronautical Radio, Inc.)

Victor J. Toth, P.C.
Law Offices
2719 Soapstone Drive
Reston, VA 22091
(Counsel for Celsat, Inc.)


Raigh K. Johnson